



CENTRAL NEW MEXICO LANDLINK
Mid-Region Council of Governments - Albuquerque, NM

FARMLAND-USE AGREEMENTS IN NEW MEXICO:

A Guide to Fostering Positive Landholder/Land Seeker Relationships

If you are looking for farmland to lease, or have land you'd like to see in production, knowing how to get started can be daunting. With this document, we hope to help land seekers and landholders alike understand the types of arrangements available to them, as well as the best way to go about negotiating an agreement. We have also included a list of considerations that both parties may want to bear in mind throughout this process.

At the end of the document, you will find two sample agreements: a Memorandum of Understanding (MOU) and a Lease Agreement. Both are templates that require customization to fit your specific needs, but we hope they will provide a jumping-off point that will help you fashion a land-use agreement that meets both farmer and landholder needs – and keeps everyone happy!

Getting Started

Before you jump straight into setting up an agreement, it can be helpful to evaluate your needs, wants, and goals, as well as your current and future plans. For landholders, this might include an assessment of the amount and quality of your property. What is the water situation? How much work will need to be done to prepare the land for planting or grazing? Do you have any equipment or other resources to contribute? (See Figure 1 below for other questions you might consider.)

Land seekers, on the other hand, might need to think about their plans for the property. What will you use the land for? What types of practices do

you hope to employ? (See Figure 2 below for other questions you might consider.)

One of the most important elements of a successful farmland-use agreement is clear and open communication. So by taking stock of these things, you will be better able to express them clearly to a potential partner.

In order to further facilitate this type of positive, proactive communication, the tables on the next page list a range of considerations landholders and land seekers might want to think about and discuss with potential partners. Though some of these topics may be difficult to discuss, doing so in advance will only help you minimize unforeseen conflicts down the line.

In New Mexico, access to water is particularly important to consider, so conversations should cover details like: amount of water (needed and available), type of water (ditch, well, etc.), the land's proximity to the water source, mode of access, and existing infrastructure.

Farmers should also be prepared to answer basic farming questions along the way, as landholders without farming experience may be curious and hope to learn from you. Being prepared and willing to share your knowledge will go a long way towards maintaining a positive relationship with your landholder.

Crafting an Agreement

While some farmers and ranchers may choose to purchase property, a variety of other land-use arrangements are available.

FIGURE 1: Landholder Questions to Consider

What type and amount of water is available?

How much work will need to be done to prepare the land for planting or grazing?

What is the one year, five year, and ten year plan for your land?

Are you considering selling your land at any point?

What resources and additional assets do you have to offer a new farmer or rancher?

How do you want to be involved?

What payment arrangement do you need to have in place?

How much do you think your land is worth?

What limitations do you need to have in place?

What values, practices, and goals do you expect from someone working your land or joining your operation?

Where do you prefer the farmer to access the parcel?

What types of insurance does someone using your property need to have (liability, workers' compensation, etc.)?

How will you settle disputes?

FIGURE 2: Land Seeker Questions to Consider

What is your one year, five year, and ten year plan?

What resources and assets do you have to offer?

What can you afford to pay for the land or land lease?

Do you have, or have you considered developing, a business plan?

Do you have financing or will you require financial assistance?

What values, practices, and goals do you bring to the situation?

Who will be responsible for maintenance and repairs?

What type(s) of insurance do you need to hold?

What noises and smells do you anticipate from your operation?

How often will you need to access the land?

No matter what type of agreement you choose, however, you will likely want to include the following elements:

- Name, address, and contact information
- Date the arrangement begins
- Duration of the agreement
- Description of the property and facilities or equipment being used
- Type and amount of payment
- Time and place of payment
- Methods for extending or renewing
- Ways the agreement may be terminated

In any type of agreement, language should be clear and concise to avoid confusion.

The following are some of the most common farmland-use arrangements:

Verbal Agreement

Less formal than its written counterparts, a verbal agreement (also known as a handshake agreement) is an oral contract between two parties. Though easy to arrange, verbal agreements may or may not be legally enforceable in the state of New Mexico, and they can lead to misunderstanding. Thus, it is

always preferable for both parties to have some sort of written agreement in place rather than to rely on a verbal agreement. If you do decide to use a verbal agreement, however, be sure to clearly communicate the terms of the agreement up front in order to avoid problems later.

Written Agreement

In situations where individuals would like to record the details of their land-use arrangement in writing, a Memorandum of Understanding (MOU) or a Letter of Agreement (often written by the farmer) can be used.

Much like a traditional lease, an MOU or Letter of Agreement should include contact information; a property description; payment, duration and termination details; and other plans and terms. However, these types of agreements are often faster and easier to fashion than their more formal counterparts. *Please note: both parties need to sign the document for this type of written agreement to be enforceable in court.*

Lease Agreements

Lease agreements are formal written documents, often drafted or reviewed by attorneys, witnessed, and notarized. When a landowner leases farmland, he or she is, in essence, giving up possession of the property for the lease term, while still retaining all of the rights included in the lease agreement. For example, the lease may allow the landowner to access the property to inspect the land, make repairs, or collect rent; however, unless the agreement allows it, the landowner cannot use the property for his or her own purposes without permission from the tenant.

Leases can run for one or multiple years, though longer-term leases foster stability and allow farmers a longer planning horizon.

A cash lease, in which the tenant pays a flat fee, is the simplest type of lease; however, crop-share leases, where parties divide crop yields based on resource contribution (e.g., if the tenant contributes 35% of the resources, he or she receives 35% of the yield), can be a way to spread the risks inherent to farming (i.e., market fluctuation, low yields, etc.).

Determining a fair price for property can be one of the most difficult parts of the negotiation process. Location, water availability, and soil quality can all influence how much a piece of land is worth. Plus, individual goals and situations may also affect pricing. While some landholders may be more interested in keeping their land in production, and may thus decide not to charge for the use of their property, or ask only for a small portion of the harvest or some other creative type of “payment,” others may be interested in covering some of their agricultural property taxes with a rental fee.

The need for communication doesn’t end when you sign your farmland-use agreement. By continuing to discuss details as they arise, and by keeping each other updated (for example, farmers might choose to send landowners regular updates), you will be more likely to sustain a positive relationship with your landholder/land seeker – and, as a result, a successful farming operation!

References

Lease Information and Templates

Libbin, J.D. “Farm Rental Agreements.” New Mexico State University Cooperative Extension Service Circular 598, 2004.

MidWest Plan Service. “Crop-Share or Crop-Share/Cash Farm Lease.” 1998.

General Land-Use Agreement Information

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Moss, L.E., and B. Erven. “Managing Landlord-Tenant Relationships: A Strategic Perspective.” The Ohio State University Extension Fact Sheet FR-0004-01.

This fact sheet is a product of the Central New Mexico LandLink, a program of the Mid-Region Council of Governments Agriculture Collaborative. More information can be found at localfoodnm.org or by calling (505) 724-3619.